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**DECISION**



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-191056

DATE: June 5, 1978

MATTER OF: Marie R. Streeter -- Claim for per diem  
incident to erroneous transfer

DIGEST: Employee, who was transferred to new duty station, filed a complaint alleging discrimination in the transfer. Appeals Review Board of Civil Service Commission ruled that the transfer was based on race and sex discrimination. Agency retroactively restored employee to her old position. Corrective action did not change interim duty status from permanent to temporary, and employee may not be paid per diem while stationed at new duty station for 3 years. However, employee is entitled to relocation expenses incident to two transfers.

This decision is in response to the request for an advance decision from Robert Caswell, an authorized certifying officer of the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, concerning the claim of Ms. Marie R. Streeter, a BIA employee, for per diem incident to her improper transfer to a new duty station.

The record indicates that effective August 19, 1973, Ms. Streeter was transferred from her position as Employment Assistance Officer at San Jose, California, to the position of Training Center Coordinator at Madera, California. Ms. Streeter filed a discrimination complaint alleging that she had been reassigned in advance of a reduction in force so as to permit the appointment of another employee to her position. The Appeals Review Board of the Civil Service Commission, in its decision dated March 16, 1976, held that the allegations of discrimination based on sex and race were supported by the evidence presented, and the Board found that but for the discrimination Ms. Streeter would have been assigned to the position of Employment Assistance Officer. The agency, in complying with the Board's decision, retroactively appointed Ms. Streeter in April, 1976, to the position of Employment Assistance Officer and retroactively changed her permanent duty station to Alameda, California.

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We note that in connection with her original transfer from San Jose to Madera, California, in 1973 and her subsequent transfer from Madera to Alameda, California, in 1976, Ms. Streeter signed a service agreement and was authorized travel and relocation expenses. However, we have been advised by the certifying officer that Ms. Streeter has not claimed any reimbursement for relocation expenses incident to these transfers. Instead, Ms. Streeter has submitted a claim for per diem while stationed in Madera from August 19, 1973, to April 16, 1976, in the amount of \$18,093.93.

By its terms, neither the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (Supp. V, 1975), nor the implementing regulations contained in 5 C.F.R. § 713.271 (1977) provide for the payment of travel or other incidental expenses such as claimed by Ms. Streeter. In addition, we have held that there is no basis under the Back Pay Act, 5 U.S.C. § 5596 (1976), for the payment of such expenses. See Ernest F. Gonzales, B-184200, April 13, 1976; and Sammy H. Marr, B-178551, January 2, 1976.

As we stated in Jimmy Morris, B-188358, August 10, 1977, involving a similar factual situation, the rule is clear that per diem or subsistence may not be paid at the employee's official duty station in the absence of a statute specifying otherwise. At the time Ms. Streeter incurred the alleged per diem expenses, Madera was her official duty station, and while the agency has retroactively appointed and transferred Ms. Streeter, we do not believe this action has the effect of changing her duty status in Madera from permanent duty to temporary duty. As noted above, Ms. Streeter signed two service agreements, and she was authorized reimbursement for relocation expenses for two transfers. Therefore, we believe that Ms. Streeter's entitlement to travel or other incidental expenses must lie with her entitlement to allowable relocation expenses incident to these two transfers.

Accordingly, the claim for per diem may not be paid.

  
Acting Comptroller General  
of the United States